

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JAMES FRANCIS ANGELUS,)
)
Plaintiff,)
) Civil No. 3:04-0735
v.) Judge Trauger
) Magistrate Judge Brown
CHRIS WARNER,)
)
Defendant.)

O R D E R

On March 20, 2006, the Magistrate Judge issued a Report and Recommendation, recommending that the Renewed Motion for Summary Judgment filed by defendant Warner be denied. (Docket No. 59) Defendant Warner filed timely Objections. (Docket No. 61) This court makes a *de novo* determination of any portion of the Magistrate Judge's disposition to which a specific objection is made. Rule 72(b), FED. R. CIV. P.; 28 U.S.C. § 636(b)(1)(C).

A de novo review of the Renewed Motion for Summary Judgment convinces this court that the Report and Recommendation was correct. Detective Williams used the word "released" in two documents and now attempts to explain away the use of a word, the plain meaning of which incriminates defendant Warner. The plaintiff has legitimately raised a factual dispute as to whether the dog was released by defendant Warner or attacked the plaintiff on his own. Not only will a jury need to make credibility determinations, but they will have to weigh the evidence and draw legitimate inferences from the facts they find to be true, as stated by the Magistrate Judge in his Report and Recommendation.

The Objections of defendant Warner are **OVERRULED**. The Report and Recommendation (Docket No. 59) is **ACCEPTED** and made the findings of fact and conclusions of law of this court. For the reasons expressed therein and herein, it is hereby **ORDERED** that the defendant's Renewed Motion for Summary Judgment (Docket No. 54) is **DENIED**.

It is hereby **ORDERED** that this case is set for a jury trial on September 19, 2006 at 9:00 a.m. It is further **ORDERED** that the Magistrate Judge shall conduct the pretrial conference at a time to be scheduled by him. He shall assist the plaintiff in the preparation of subpoenas, discuss exhibits, instructions and all other matters necessary for having the case ready to be tried on the date set, including the entry of a pretrial order.

It is so **ORDERED**.

Enter this 6th day of July 2006.



ALETA A. TRAUGER
United States District Judge